

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 667 of 2000

Date of decision: 8.10.2007

State of H.P.

...Appellant.

Versus

Deepak Kumar and others

...Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. Mr. D.S. Nainta, Dy. A.G.

For respondents : Mr. Rahul Mahajan, Advocate.

Surjit Singh, Judge(Oral)

State has filed this appeal against the judgment of trial Magistrate, whereby the respondents, who were sent up for trial for an offence punishable under Section 456 of the Indian Penal Code, stand acquitted.

2. Accusation that was made against the respondents by the police before the trial Magistrate, may be summed up thus. On 15.12.1999, when PW-1 Vijay Kumar was having morning walk and reached near his shop in village Rehan around 5.30 a.m., he noticed that the shutter of the shop of Daulat Ram, which was situated close to his own shop, was raised about two feet. He called Gian Chand, Chhaju Ram (PW-2) and one Rajinder Kumar and all of them looked into the shop and noticed respondent Deepak Kumar collecting readymade garments kept in the shop for sale and packing them in a bag. Vijay Kumar then went to the Police Post to lodge the report leaving the above-named three persons

Whether reporters of the local papers may be allowed to see the judgment?

to guard the spot. After some-time police reached the spot. Respondent Deepak Kumar was apprehended. His photograph with a blade in his hand was also taken. It was found during the course of investigation that the locks of the shop of Daulat Ram had been cut with a hexa-blade and two cut locks were found outside the shop. The police on completion of the investigation of the case challaned said Deepak Kumar and the other two respondents, who allegedly assisted him in cutting the locks and committing the offence of house breaking by night.

3. Prosecution examined six witnesses, including Vijay Kumar PW-1 and Chhaju Ram PW-2, who allegedly saw respondent Deepak Kumar inside the shop. The respondents denied in their statements that they were responsible for breaking open the locks of the shop or they committed house breaking by night.

4. I have heard the learned Deputy Advocate General for the appellant – State and gone through the record.

5. Even though it is stated by PW-1 Vijay Kumar that he saw respondent Deepak Kumar inside the shop at 5.30 a.m. and after making the three persons, including Chhaju Ram (PW-2), to guard the respondent inside the shop, he immediately went to the Police Post situated in village Rehan itself, yet record of the statement under Section 154 of the Criminal procedure Code, which he made to the Incharge Police Post Rehan, shows that he made the statement at 8.00 a.m. No doubt the time apparently written under the signature of the Incharge Police Post at the foot of the statement is 7.00 a.m., but it has been written over 8.00 a.m. No explanation has been put-forward by the prosecution for this long delay. The unexplained delay gives the impression that the story of

respondent Deepak Kumar having been spotted inside the shop at 5.30 a.m. may not be correct. There are also contradictions in the testimony of PW-1 Vijay Kumar and PW-2 Chhaju Ram. Vijay Kumar says that respondent Deepak Kumar was packing the readymade garments in a bag. He says that at that time Chhaju Ram and two other persons, called by him, were also there. However, PW-2 Chhaju Ram says that Deepak Kumar, respondent was sitting inside the shop when they further raised the shutter. PW-4 Joginder Singh has stated that he took photograph of respondent Deepak Kumar, when he was sitting outside the shop with a blade. The photograph also shows that it was taken when Deepak Kumar, respondent was not inside the shop but outside it in front of the shutter.

6. No evidence worth the name was led against the remaining two respondents.

7. In view of the above stated position, it cannot be said that the view taken by the trial Magistrate is perverse or not supportable by the evidence on record. Therefore, the appeal is dismissed.

October 8, 2007 (BC)

**(Surjit Singh)
Judge**